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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO.       |
|---|-------------|----------------------|-------------------------|------------------------|
| 10/520,231  | 01/04/2005  | Andre Johan Taljaard | 930092-2008             | 5104                   |
| 7590<br>Ronald R Santuccit<br>Frommer Lawrence & Haug<br>745 Fifth Avenue<br>New York, NY 10151 |             |                      | EXAMINER<br>MAI, HAO D  |                        |
|   |             |                      | ART UNIT<br>3732        | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>12/18/2007 | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/520,231

Applicant(s)

TALJAARD, ANDRE JOHAN

Examiner

Hao D. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) and/or 37 CFR 1.84(p)(5) because:
  - Reference number "24" is assigned to multiple different structures "upper teeth 24" (page 9 line 25), "lower teeth 24" (page 9 line 26), and "dental arches 24" (page 10 line 4).
  - They include the following reference character(s) not mentioned in the description: "9" and "70" (Fig. 1); "30" and "34" (Fig. 2).
  - Reference number "20" (page 8 line 3) and "29" (page 10 line 26) have both been used to designate "a base".
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 1 recites the limitations "the patient" (claim 1 lines 2-3, 9), and "said first and second patient engaging zones" (claim 1 line 5), which lack antecedent bases.
- Claims 3-4 recite the limitation(s) "the form", which lack antecedent basis.
- Claim 14 recites the limitation "the bite size" (claim 14 line 2), which lack antecedent basis.
- It is unclear what kind of dimensions of the patient (claim 14) the jaw engaging portions are configured to approximate.
- Claim 18 recites the limitation "the patient" (claim 18 lines 2, 4), which lack antecedent basis.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7, 9-12, 14, and 18, are rejected under 35 U.S.C. 102(b) as being anticipated by Cameron (1389436).

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Cameron discloses a dental device capable of guiding a medical tube comprising: first and second patient engaging portions 7 each engaging a patient's upper and lower jaws, and are biased apart to provide a working gap between them; and a medical tube guide means/coil spring 6 that is supportable on one or both of the patient engaging portions 7 and locatable relative to the patient engaging portions 7 (Figs. 1-3). Patient engaging portions 7 are shown to be in the form of a pair of resiliently deformable arms 5 and dental arch/hooks 8 having approximate bite size and dimensions to engage the upper and lower jaw of the patient (Figs. 1-3). The two patient engaging portions 7 pivotally meet at the apex, forming the medical tube guide means/coil spring 6 keeping the two arms resiliently biased (page 2, lines 38-39). The medical tube/coil spring 6 is shown includes an eye/opening that is capable of guiding a medical tube through the working gap into the patient's mouth (Figs. 1-3).

The method comprising the steps of biasing a patient's teeth away from the medical tube while permitting the medical tube to be guided into the patient is naturally and inherently carried out when using the device disclosed by Cameron.

**7. Claims 1-7, 9, 12, 14, and 18, are further rejected under 35 U.S.C. 102(b) as being anticipated by Eldreth (5769635).**

Eldreth discloses a bite block capable of guiding a medical tube comprising: a first and second patient engaging portions/bite pads 11 each engaging a zone of an upper jaw and lower jaw of the patient, the first and second patient engaging zones are biased apart to provide a working gap between them; and a medical tube guide means/opening 14 supportable on one or both of the patient engaging portions 11 and locatable relative to the patient engaging portion to guide a medical tube through the working gap into a mouth of the patient. Eldreth further discloses the patient engaging portions 11 to be: formed of deformable material (column 1 lines

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40-41); in the form of a pair of arms 12 having tooth engaging portions (Figs. 1, 3); and in the form of a pair of dental arches having tooth engaging portions (column 1 lines 50-51). The bite block is shown to be located eccentrically the working gap, permitting a view into the patient's mouth, and immobilize the medical tube 18 in a desired position (Figs. 1, 3). The pair of arms 12 are shown to meet at an apex which forms a support point for the medical tube guide means 14 which is an eye/opening through which the medical tube 18 passes.

The method comprising the steps of biasing a patient's teeth away from the medical tube while permitting the medical tube to be guided into the patient is naturally and inherently carried out when using the device disclosed by Eldreth.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldreth (5769635) in view of Bradley et al. (5,626,128).**

Eldreth teaches of the invention substantially as claimed. However, Eldreth failed to disclose a securing means (claim 8) and a slip resistant portion (claim 13).

Bradley et al. teach of a endo-tracheal tube fixation device having a securing means/clamp 40/44 that is operable between a securing position to secure the medical tube against longitudinal displacement and a releasing position allowing the medical to be

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longitudinally displaceable into and out of the patient's mouth (Figs. 1-2). Bradley et al. also disclose clamp 40/44 having an interior surface with slip resilient features such as adhesive, grooves, raised projections, etc., to prevent slippage movement of the medical tube by having (column 4 lines 29-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eldreth by including the securing means/clamp 40/44 having a slip resistant interior surface in order to prevent free movement and slippage of the medical tube as explicitly taught by Bradley et al.

### ***Response to Arguments***

10. Applicant's arguments filed 10/29/2007 have been fully considered but they are not persuasive and are moot in view of the new ground(s) of rejection. With all the claimed structures shown, "to guide a medical tube" is not given capability. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the diameter of the coil spring to not be reduced, the coil spring to not lie flat or flush against the patient's cheek) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

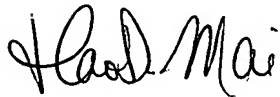
### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hao D. Mai whose telephone number is (571) 270-3002. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964.

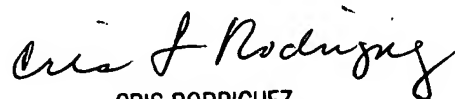
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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HDM 12/11/2007



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